

UNITED STATES DISTRICT COURT

Northern District of California

San Francisco Division

KENNETH SMITH ARDELL,

No. C 13-01048 LB

Plaintiff,

**ORDER RE MOTION FOR DEFAULT
JUDGMENT**

v.

[RE: ECF No. 9]

C.D.C. PELICAN BAY STATE PRISON
OFFICER IN-CHARGE CRESENT CITY
PRISON STATE OF CALIFORNIA
DEPARTMENT OF CORRECTION
FACILITY,

Defendant(s).

Pro se plaintiff Kenneth Smith Ardell filed a complaint against “C.D.C. Pelican Bay State prison officer in-charge Cresent City Prison State of California Department of correction facility”¹ (“Defendants”) on March 7, 2013. Complaint, ECF No. 1.² He then moved for leave to proceed *in forma pauperis*. IFP Application, ECF No. 3. The court granted Mr. Ardell’s application to proceed

¹ It is unclear from the complaint whether there is just one or multiple defendants. *See* Complaint, ECF No. 1.

² Citations are to the Electronic Case File (“ECF”) with pin cites to the electronically-generated page numbers at the top of the document.

1 *in forma pauperis* on March 20, 2013. Order Granting IFP, ECF No. 5. On March 25, 2013, Mr.
2 Ardell filed a document captioned “Complaint dismiss.” *See* ECF No. 7. Mr. Ardell stated:

3 A.D.R., case management information here i release, i wish to dismiss the civil charges
4 against pelican bay State prison de fendants employee’s correctional officers i have no further
5 intrest in this case of such arguments as appriately presented no further proceedings as
Concerns the end of all dealing if you have any question please contact at above celuar phone
number, don’t waste your time no intrest in civil case canceled.

6 *Id.* (errors in original). The document was signed “ex plaintiff. Sincerely Kenneth Ardell.” *Id.* The
7 court construed this document as a notice of voluntary dismissal and terminated the case on
8 March 27, 2013. *See* Docket.

9 On April 12, 2013, Mr. Ardell filed a document asking for default judgment based on the
10 Defendants’ failure to file a responsive pleading. *See* ECF No. 9. Mr. Ardell claims: “the summons
11 and complaint was served on the defendant on date of service process on the defendant by personal
12 U.S. Marshall Service under the court on defendant stateing specifically how service was
13 accomplished and proof of service of process on defendant was filed with the court.” ECF No. 9 at
14 2 (errors in original). Mr. Ardell claims service was effected “[a]bout the date 3-19-13.” *Id.* at 1.
15 He asks the court to enter default judgment for “the liquidated amount of \$26,000,000 of damages
16 sought, plus interest at percentages as shown by the attached Statement of damages” *Id.* at 2.
17 No statement of damages was attached. *See id.*

18 A plaintiff may voluntarily dismiss an action without a court order by filing “a notice of
19 dismissal before the opposing party serves either an answer or a motion for summary judgment
20” Fed. R. Civ. P. 41(a)(1)(A). Unless plaintiff’s notice of dismissal states otherwise, it is
21 deemed to be “without prejudice.” *See* Fed. R. Civ. P. 41(a)(1)(B); *Pedrina v. Chun*, 987 F.2d 608,
22 610 (9th Cir. 1993). In the instant case, Mr. Ardell filed a notice that clearly expressed his intention
23 to dismiss his complaint. *See* ECF No. 7. The notice was filed before the Defendants served an
24 answer. *See generally* Docket. Thus, under the Federal Rules of Civil Procedure, Mr. Ardell
25 voluntarily dismissed his action without prejudice, rendering his case terminated. Because the court
26 no longer has jurisdiction over this matter, the motion for default judgment is **DENIED**.

27 Even if Mr. Ardell had not dismissed the case, the court would deny his motion for default
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1 judgment because he has not followed the proper procedures. Under Federal Rule of Civil
2 Procedure 55, a plaintiff must first file a request for entry of default with the Clerk of the Court
3 together with proof that the complaint has been served to the defendant. Fed. R. Civ. P. 55(b). Once
4 the Clerk of the Court has entered default judgment against the defendant, the plaintiff must then file
5 a motion for default judgment along with the proper supporting documents. *See id.* Because Mr.
6 Ardell has not filed a motion for default with the Clerk of Court, and because default has not been
7 entered, the court cannot grant his motion for default judgment.

8 And even if Mr. Ardell had followed proper procedures, the court would still deny his motion.
9 Default judgment may be refused where the court determines no justifiable claim has been alleged;
10 or that a default judgment is inappropriate for other reasons. *Draper v. Coombs*, 792 F.2d 915, 924
11 (9th Cir. 1986). The motion for default judgment states that the “complaint was served on the
12 defendant by personal U.S. Marshall Service,” but the docket does not reflect proof of service. *See*
13 Docket. While Mr. Ardell represents that the U.S. Marshall served the Defendants “about 3-19-13,”
14 the court notes that it did not even authorize such service until March 20, 2013. If this case is
15 reopened, Mr. Ardell should remedy these deficiencies before filing another motion for default
16 judgment.

17 In order to help Mr. Ardell comply with court procedures, attached is a copy of the district
18 court’s *Representing Yourself in Federal Court: A Handbook for Pro Se Litigants*. It provides
19 instructions on how to proceed at every stage of your case, including discovery, motions, and trial.

20 Mr. Ardell may also seek assistance from the Legal Help Center, a free service of the Volunteer
21 Legal Services Program, by calling 415-782-9000, extension 8657, or by signing up for an
22 appointment on the 15th Floor of the Federal Courthouse in San Francisco, 450 Golden Gate
23 Avenue, San Francisco, California. At the Legal Help Center, you will be able to speak with an
24 attorney who may be able to provide basic legal help, but not representation. A copy of the Legal
25 Help Center’s flyer is attached.

26 For the reasons stated above, the Court **DENIES** Mr. Ardell’s motion for default judgment. If
27 Mr. Ardell did not intend to dismiss his case, he shall file a document explaining that and clarifying
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1 the meaning of his March 25, 2013 filing. Mr. Ardell shall file any such explanation with the court
2 no more than 14 days after the date of this order. The court will not consider any late filings.

3 **IT IS SO ORDERED.**

4 Dated: April 22, 2013



LAUREL BEELER
United States Magistrate Judge

UNITED STATES DISTRICT COURT
For the Northern District of California